

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

T-MOBILE USA, INC.,)	
)	
Petitioner/Cross-Respondent)	
)	
v.)	No. 16-60284
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent/Cross-Petitioner)	
)	Consolidated with
<hr style="border: 0.5px solid black;"/>		
NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner No.)	
)	16- 60497
v.)	
)	
METROPCS COMMUNICATIONS, INC.)	
)	
Respondent)	

JUDGMENT

Before: KING, JOLLY, and PRADO, Circuit Judges.

THIS CAUSE came to be heard upon a petition filed by T-Mobile USA, Inc. to review, a cross-application filed by the National Labor Relations Board to enforce against T-Mobile USA, Inc., and an application filed by the National Labor Relations Board to enforce against MetroPCS Communications, Inc., an Order of the National Labor Relations Board in Board Case Nos. 02-CA-115949, 10-CA-128492, 14-CA-106906, 28-CA-106758, 28-CA-117479, 28-CA-128653, and 28-CA-129125, reported at 363 NLRB No. 171 (Apr. 29, 2016). The Court heard argument of the parties and has considered the briefs and agency record filed in this cause. On July 25, 2017, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of T-Mobile USA, Inc., granting in part the Board's cross-application for enforcement, and granting the Board's application for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondents, T-Mobile USA, Inc. and MetroPCS Communications, Inc., their officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendices).

ENTERED: AUGUST 17, 2017



Certified as a true copy and issued
as the mandate on Oct 10, 2017

Attest: *Jyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

T-MOBILE USA, INC.

v.

NATIONAL LABOR RELATIONS BOARD

and

NATIONAL LABOR RELATIONS BOARD

v.

METROPCS COMMUNICATIONS, INC.

ORDER

A. T-Mobile USA, Inc., Bellevue, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Maintaining a provision in the Introduction-Employee Handbook Purpose section of its employee handbook stating that the handbook is a confidential and proprietary document that must not be disclosed to or used by any third party without the Respondent's written consent.
- (b) Maintaining a rule in the Business Practices-Internal Investigations section of its employee handbook that requires employees to maintain the confidentiality of the names of employees involved in internal investigations as complainants, subjects, or witnesses.
- (c) Promulgating and maintaining a rule in the Payroll-Wage and Hour Complaint Procedure section of its employee handbook that requires employees who feel they have not been paid all wages or pay owed to them, believe that an improper deduction was made from their salary, or feel they have been required to miss meal or rest periods to contact a manager, an HR business partner, or the integrity line.
- (d) Promulgating and maintaining a rule in the Workplace Expectations-Communications with the Media section of its employee handbook that requires employees to refer all media inquiries to the Respondent without comment.
- (e) Maintaining a rule in its Acceptable Use Policy that prohibits employees from using its information or communications resources in ways that could be considered disruptive, offensive, or harmful to morale.
- (f) Maintaining a rule in its Acceptable Use Policy that prohibits employees from using its information or communications resources to advocate, disparage, or solicit for political causes or non-company-related outside organizations.

- (g) Maintaining a rule that requires employees to sign a Restrictive Covenant and Confidentiality agreement that classifies employee wage and salary information as confidential and proprietary information not subject to disclosure.
 - (h) Maintaining a rule in the Confidentiality and Information Security section of its Code of Business Conduct that prohibits employees from disclosing employee information that is defined to include employee addresses, telephone numbers, and contact information and prohibits employees from accessing such information without a business need to do so and without the Respondent's prior authorization or the consent of employees.
 - (i) Maintaining a rule in the Protecting Customer Information-Confidentiality of Each Other's Information section of its Code of Business Conduct that prohibits employees from disclosing employee information, such as employee addresses and other contact information, except in the proper performance of their duties, and suggests that employees may be disciplined or subject to legal action for violating the rule.
 - (j) Maintaining a rule in the Conducting Business-Commitment to Integrity section of its Code of Business Conduct that prohibits employees from making detrimental comments about the Respondent or its customers, products, services, or employees.
 - (k) Promulgating and maintaining a rule in the Workplace Expectations-Recording in the Workplace-Audio, Video, and Photography section of its employee handbook that prohibits employees from recording using camera, camera phones/devices, or recording devices (audio or video) in the workplace without authorization from a manager, the human resources department, or the legal department.
 - (l) Maintaining a rule that requires employees to sign an Employee Acknowledgement Form that requires employees to comply with unlawful work rules and to report employees who do not comply with rules and policies that have been found to be unlawful.
 - (m) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days of the Board's Order, rescind or revise the provisions and rules set forth in paragraphs 1(a) through (l) of our Order, above.
 - (b) Furnish all current employees with inserts for the current employee handbook, Code of Business Conduct, and Acceptable Use Policy that (1) advise that the unlawful rules have been rescinded, or (2) provide the language of lawful rules or publish and distribute a revised employee handbook, Code of Business Conduct, and Acceptable Use Policy that (a) do not contain the unlawful rules or (b) provide the language of lawful rules.

- (c) Furnish all current or former employees who were required to sign or otherwise become bound to the Restrictive Covenant and Confidentiality agreement with written notice that the unlawful provision in the agreement has been rescinded, or with revised agreements that do not contain the unlawful provision or that provide a lawfully worded provision.
- (d) Within 14 days after service by the Region, post at all of its T-Mobile USA, Inc. facilities where the unlawful rules and policies have been or are in effect copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with their employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at their own expense, a copy of the notice marked "Appendix A" to all current employees and former employees employed by the Respondent at any time since December 7, 2012.
- (e) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. MetroPCS Communications, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Maintaining a rule in the Business Practices-Internal Investigations section of its employee handbook that requires employees to maintain the confidentiality of the names of employees involved in internal investigations as complainants, subjects, or witnesses.
- (b) Maintaining a rule that requires employees to sign a Restrictive Covenant and Confidentiality agreement that classifies employee wage and salary information as confidential and proprietary information not subject to disclosure.
- (c) Maintaining a rule in the Confidentiality and Information Security section of its Code of Business Conduct that prohibits employees from disclosing employee information that is defined to include employee addresses, telephone numbers, and contact information and prohibits employees from accessing such information without a business need to do so and without the Respondent's prior authorization or the consent of employees.

- (d) Maintaining a rule that requires employees to sign an Employee Acknowledgement Form that requires employees to comply with unlawful work rules and to report employees who do not comply with rules and policies that have been found to be unlawful.
 - (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days of the Board's Order, rescind or revise the provisions and rules set forth in paragraphs 1(a) through (d) of our Order, above.
 - (b) Furnish all current employees with inserts for the current employee handbook and Code of Business Conduct that (1) advise that the unlawful rules have been rescinded, or (2) provide the language of lawful rules or publish and distribute a revised employee handbook and Code of Business Conduct that (a) do not contain the unlawful rules or (b) provide the language of lawful rules.
 - (c) Furnish all current or former employees who were required to sign or otherwise become bound to the Restrictive Covenant and Confidentiality agreement with written notice that the unlawful provision in the agreement has been rescinded, or with revised agreements that do not contain the unlawful provision or that provide a lawfully worded provision.
 - (d) Within 14 days after service by the Region, post at all of its MetroPCS Communications, Inc. facilities where the unlawful rules and policies have been or are in effect copies of the attached notice marked "Appendix B." Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with their employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at their own expense, a copy of the notice marked "Appendix B" to all current employees and former employees employed by the Respondent at any time since May 1, 2013.
 - (e) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a provision in the Introduction-Employee Handbook Purpose section of our employee handbook stating that the handbook is a confidential and proprietary document that must not be disclosed to or used by any third party without our written consent.

WE WILL NOT maintain a rule in the Business Practices-Internal Investigations section of our employee handbook that requires you to maintain the confidentiality of the names of employees involved in internal investigations as complainants, subjects, or witnesses.

WE WILL NOT promulgate or maintain a rule in the Payroll-Wage and Hour Complaint Procedure section of our employee handbook that requires you, if you feel you have not been paid all wages or pay owed to you, believe that an improper deduction was made from your salary, or feel you have been required to miss meal or rest periods, to contact a manager, an HR business partner, or the integrity line.

WE WILL NOT promulgate or maintain a rule in the Workplace Expectations-Communications with the Media section of our employee handbook that requires you to refer all media inquiries to the Respondent without comment.

WE WILL NOT maintain a rule in our Acceptable Use Policy that prohibits you from using our information or communications resources in ways that could be considered disruptive, offensive, or harmful to morale.

WE WILL NOT maintain a rule in our Acceptable Use Policy that prohibits you from using our information or communications resources to advocate, disparage, or solicit for political causes or noncompany-related outside organizations.

WE WILL NOT require you to sign a Restrictive Covenant and Confidentiality agreement that classifies employee wage and salary information as confidential and proprietary information not subject to disclosure.

WE WILL NOT maintain a rule in the Confidentiality and Information Security section of our Code of Business Conduct that prohibits you from disclosing employee information that is defined to include employee addresses, telephone numbers, and contact information and prohibits you from accessing such information without a business need to do so and without our prior authorization or the consent of employees.

WE WILL NOT maintain a rule in the Protecting Customer Information-Confidentiality of Each Other's Information section of our Code of Business Conduct that prohibits you from disclosing employee information, such as employee addresses and other contact information, except in the proper performance of your duties, and suggests that you may be disciplined or subject to legal action for violating the rule.

WE WILL NOT maintain a rule in the Conducting Business-Commitment to Integrity section of our Code of Business Conduct that prohibits you from making detrimental comments about us or our customers, products, services, or employees.

WE WILL NOT promulgate or maintain a rule in the Workplace Expectations-Recording in the Workplace-Audio, Video, and Photography section of our employee handbook that prohibits you from recording using camera, camera phones/devices, or recording devices (audio or video) in the workplace without authorization from a manager, the human resources department, or the legal department.

WE WILL NOT require you to sign an Employee Acknowledgement Form that requires you to comply with unlawful work rules and to report employees who do not comply with rules and policies that have been found to be unlawful.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind or revise the unlawful provisions and rules described above.

WE WILL furnish you with inserts for our current employee handbook, Code of Business Conduct, and Acceptable Use Policy that (1) advise that the unlawful rules have been rescinded, or (2) provide the language of lawful rules or publish and distribute a revised employee handbook, Code of Business Conduct, and Acceptable Use Policy that (a) do not contain the unlawful rules or (b) provide the language of lawful rules.

WE WILL furnish all current and former employees who were required to sign or otherwise become bound to the Restrictive Covenant and Confidentiality Agreement with written notice that the unlawful provision in the agreement has been rescinded, or with revised agreements that do not contain the unlawful provision or that provide a lawfully worded provision.

T-MOBILE USA, INC.

APPENDIX B

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

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METROPCS COMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service was accomplished by the appellate CM/ECF system.

Dated: August 7, 2017

/s/ Mark Theodore
Mark Theodore